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No. 514

In the Supreme Court of the United States
October Term, 1958

STATES STEAMSHIP COMPANY, *Petitioner*
v.
UNITED STATES OF AMERICA, ATLANTIC MUTUAL INSURANCE CO., PACIFIC NATIONAL FIRE INSURANCE CO., and THE DOMINION OF CANADA,
Respondents.

BRIEF OF THE DOMINION OF CANADA IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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A.

INTRODUCTORY STATEMENT

The DOMINION OF CANADA, as a cargo claimant and a respondent herein, has not consented to the filing of an *amici curiae* brief by steamship companies that are identified as members of Pacific American Steamship Association because this case does not concern such vessel owners and involves only the question of liability of the petitioner herein to respondents for loss of cargo resulting from the sinking of the SS *Pennsylvania*.

This is made crystal clear by the last opinion by the Court of Appeals for the Ninth Circuit wherein it is stated:

> "It is suggested that there is something in our opinion to the effect that all welded steel vessels are unseaworthy . . . . we did not so hold. . . . The suggestion that our decision puts all welded ships out of business over the northern route is wholly unwarranted." (August 20, 1958 opinion of CA 9, 259 F.2d 458, 475; see also at Appendix E at p. 44a-45a)*

The DOMINION OF CANADA as a cargo claimant and a respondent adopts and concurs with all of the statements and authorities set forth or cited in the brief

*References in this brief to Appendices relate to those in the Petition for Writ of Certiorari.

of ATLANTIC MUTUAL INSURANCE CO. and PACIFIC NATIONAL FIRE INSURANCE CO. in opposition to the Petition for Writ of Certiorari filed herein by STATES STEAMSHIP COMPANY. In addition, THE DOMINION OF CANADA submits the following:

B.

REASONS WHY PETITION SHOULD NOT BE GRANTED

1. The latest decisions of the Court of Appeals for the Ninth Circuit are not in conflict with the decisions of any other Court of Appeals.*

Petitioner urges (p. 25) that the final ruling below is in conflict with the Court of Appeals for the Second Circuit in *Peter Paul, Inc. v. Rederi A B Pulp*, 258 F.2d 901, a case involving the breaking in two of a Swedish built vessel, the *Christer Salen*. The court's opinion in this later case in the Second Circuit considered the Ninth Circuit decisions in the present case and then stated:

> "The recent case of *States Steamship Co. v. United States*, 9 Cir. . . . F.2d . . . , is distinguishable . . . ."

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*Both the Nov. 15, 1957 opinion and the August 20, 1958 opinion of the Court of Appeals for the Ninth Circuit are conveniently printed together at 259 F.2d 458, 463, 470.

The decision of the Second Circuit in *Peter Paul, Inc. v. Rederi A/B Pulp, supra,* went on to point out factual differences as to the type of vessel and past history and circumstances of the loss which, as to the present case of the *Pennsylvania*, "should have put the owner on notice that he had an unseaworthy vessel."

2. The latest decisions of the Court of Appeals for the Ninth Circuit are not in conflict with decisions of this Court.

Contrary to petitioner's contentions (p. 14), the latest decisions of the Court of Appeals for the Ninth Circuit did not disregard the standard of appellate review set out by this Court in *McAllister v. United States*, 348 U.S. 19. In fact, the court below expressly referred to and adhered to these standards in its decision of November 15, 1957 on Petition for Rehearing. (Appendix E at page 26a; see also at 259 F.2d 458, 466). In doing so the Court of Appeals merely corrected its "conclusion" concerning limitation of liability that was inconsistent with and not supported by the trial court's findings of fact as to lack of due diligence by managerial employees of petitioner. (Appendix D at page 22a)

3. The Court of Appeals has not decided any new question of federal law which has not been previously passed upon by this Court.

The latest decisions below both cited and followed

the decision of this Court in *Spencer-Kellogg Co. v. Hicks*, 285 U.S. 502 on the question of denial of limitation of liability where managerial employees of the shipowner failed to use due diligence to ascertain whether the *Pennsylvania* was seaworthy before departure on the voyage. (Appendix D at page 29a and Appendix E at page 39a). Finding V of the trial court established this fact.

Petitioner urges (at page 20) that the decision below on lack of due diligence would *invariably* involve the shipowner's privity and knowledge, contrary to the language of the Limitation of Liability Act, Title 46 U.S. Code § 183(a). The Court of Appeals for the Ninth Circuit pointed out in its last opinion that "We did not so hold." (Appendix E at page 38a). The decision goes on to point out that it was the negligence of *managerial* personnel who had knowledge of the unseaworthy condition of the vessel by reason of serious deck cracks on the last voyage that formed the primary basis for denial of limitation in the present case. Throughout the opinions the Court of Appeals for the Ninth Circuit stressed the fact that this neglect was not of "minor or subordinate employees," but of "managerial employees" of petitioner.

4. This case is not of extraordinary, or even of special, importance to the steamship industry.

The labored and abortive effort by petitioner and

movants for *amici curiae* status to make this case one of special importance and of public interest is demonstrated by their reliance upon a television reporter's analysis (Appendix E at page 44a); reference to editorial comments on the case in two unknown trade journals (Petitioners Brief page 31); and by movants expressed concern whether all "war built vessels" with "fracture experience" must be taken out of service "in the wintertime" because of the decision of the court below. (Motion for Leave to File as Amici Curiae at page 2). The comments and quotations from the latest decision by the Court of Appeals for the Ninth Circuit in our INTRODUCTORY STATEMENT adequately cover these rather extravagant and unfounded contentions.

C.

CONCLUSION

A reading and rereading of the latest decisions of the court below clearly establishes that all of the questions raised by petitioner and by movants have been fully considered, weighed and properly decided and answered by the Court of Appeals for the Ninth Circuit in accordance with established principles of Maritime law applicable to this case. There is therefore no reason why this court should review any issue in this cause.

Respectfully submitted.

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